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Eric M. Hocky
Direct Dial 215 640 8523
Email ehocky@thorpreed.com

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VIA OVERNIGHT DELIVERY

231309

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

November 17, 2011

Re: Hilton & Albany Railroad, Inc. – Lease and Operation
Exemption – Norfolk Southern Railway Company
STB Docket No. FD 35567

Genesee & Wyoming Inc. – Continuance in Control Exemption
– Hilton & Albany Railroad, Inc.
STB Docket No. FD 35568

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Notice of Exemption under 49 CFR 1150.41 being filed on behalf of Hilton & Albany Railroad, Inc. Also enclosed is a check in the amount of \$1800 representing the filing fee.

Also enclosed for filing are the original and 10 copies of the related Petition for Exemption being filed on behalf of Genesee & Wyoming Inc. Twenty unbound copies of the maps attached to the Petition as Exhibits B and C are also included. A check in the amount of \$9300 representing the filing fee is also enclosed.

Please time stamp the extra copy of the Notice of Exemption and of the Petition for Exemption, and return them to me in the stamped, self-addressed envelope provided for your convenience.

Please let me know if there are any questions regarding this filing.

Respectfully,

Eric M. Hocky

FILED

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EMH/c
Enclosures
cc: Allison Fergus (w/encl.. via e-mail)

(P0132749) (STB filing)

Enclosure

Enclosure

Enclosure

Enclosure

Thorpe Reed & Armstrong, P.C.
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103-7041
215.640.8523
215.640.9501 Fax

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35568

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**GENESEE & WYOMING INC.
- CONTINUANCE IN CONTROL EXEMPTION -
HILTON & ALBANY RAILROAD, INC.**

PETITION FOR EXEMPTION

EXPEDITED CONSIDERATION REQUESTED

ERIC M. HOCKY
THORP REED & ARMSTRONG, LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@thorpreed.com

Dated: November 17, 2011

Attorneys for Genesee & Wyoming Inc.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35568

GENESEE & WYOMING INC.
– **CONTINUANCE IN CONTROL EXEMPTION –**
HILTON & ALBANY RAILROAD, INC.

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PETITION FOR EXEMPTION

Genesee & Wyoming Inc. ("GWI"), a publicly traded non-carrier, petitions for an exemption under 49 U.S.C. §10502 and 49 C.F.R. §1121 from the provisions of 49 U.S.C. §§11323-11324 to enable GWI to control Hilton & Albany Railroad, Inc. ("HAL"), together with the other railroads currently controlled directly and indirectly by GWI. This Petition is related to the notice of exemption being filed by HAL in STB Docket No. FD 35567 with respect to HAL's lease from Norfolk Southern Railway Company ("NSR"), and operation of, a 55.5 mile line of railroad between Hilton and Albany, Georgia. Because GWI cannot control an additional railroad without the prior approval of the Board, it is requesting that the Board grant the exemption requested herein prior to the proposed commencement of operations by HAL on January 1, 2012.

In support of its request for exemption, GWI represents as follows:

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THE PROPOSED TRANSACTION

GWl currently controls, directly or indirectly, one Class II carrier and fifty-eight Class III carriers operating in the United States. A list of the carriers and the states in which they operate is attached as Exhibit A.¹ A map showing the locations of all of the United States carriers controlled by GWl is attached as Exhibit B.

HAL is a newly formed corporation, wholly owned by GWl, which has entered into a lease with NSR to operate the 55.5 mile line of railroad between Hilton and Albany, Georgia beginning on January 1, 2012. HAL is filing today for an exemption for its proposed lease and operation of the line. When the lease commences, HAL will be a Class III common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105. A map of the line to be leased and operated by HAL is attached as Exhibit C. As can be seen on the map, the line to be operated by HAL directly connects with the lines of the following three carriers already controlled by GWl: Chattahoochee Bay Railroad ("CHAT"), Chattahoochee Industrial Railroad, and Georgia Southwestern Railroad, and indirectly with a fourth, The Bay Line Railroad (via CHAT).

Because the line to be acquired by HAL is the outlet for four existing GWl subsidiary railroads, GWl's control of HAL will allow for better coordination, and improved efficiency of service. Service will also be improved because HAL has agreed as part of its lease to upgrade the line to FRA Class 2. Further, HAL will be able to take advantage of the administrative services, and localized marketing presence that GWl and the local short lines can provide.

¹ Most recently, GWl was authorized to control Arizona Eastern Railway Company. See *Genesee & Wyoming Inc. Control Exemption – Arizona Eastern Railway Company*, STB Docket No. FD 35537 (served August 18, 2011).

GWl's continuance in control of HAL and the other carriers in it is system does not involve a Class I carrier. If not for the fact that the line to be operated by HAL connects with other Class III carriers already controlled by GWl, this transaction would be an exempt transaction under 49 C.F.R. §1180.2(d)(2). Since the transaction is not eligible for the class exemption notice procedures, GWl is filing this Petition for Exemption.

ADDITIONAL INFORMATION

GWl provides the following additional information about the transaction to enable the Board to process this Petition²:

1180.6(a)(1)

(i) The proposed transaction, as more fully described above, involves the common control of HAL together with the other carriers in GWl's control when HAL becomes a carrier through its lease and operation of a line of railroad. The full name and address of the petitioner is Genesee & Wyoming Inc., 66 Field Point Road, Greenwich, CT 06830.

The name, address and telephone number of the representative of GWl who should receive correspondence is: Eric M. Hocky, Esquire, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(ii) GWl would like to have authority to control HAL at the time HAL commences operations on January 1, 2012.

² This additional information is the information that would have been required under 49 C.F.R. §1180.4(g), if the transaction were eligible for the class exemption.

(iii) The purpose of the transaction is to allow GWI to control HAL together with the other carriers in its system, and to allow HAL to take advantage of the knowledge of the existing connecting railroads, and the administrative and operational support that GWI can provide.

1180 6(a)(5)

HAL will operate in the southwestern portion of the State of Georgia. The railroads controlled by GWI operate in the respective states listed on Exhibit A. As noted above, the controlled that will connect, directly and indirectly with the line to be operated by HAL, also operate in southwest Georgia, southeastern Alabama and the panhandle of Florida. The Bay Line Railroad which connects to CIRR operates in Alabama. See Exhibit C.

1180 6(a)(6)

A map showing the line to be leased and operated by HAL, and the lines of connecting controlled carriers is attached as Exhibit C. A map of the United States generally showing the locations of the GWI controlled railroads is attached as Exhibit B.

1180 6(a)(7)(ii)

There are no documents that will govern the common control of HAL and the other carriers already controlled by GWI (other than the respective corporate governing documents).

Employee protection

As discussed more fully below, because this transaction involves the control of one Class II carrier and a number of Class III carriers, the labor protection requirements of 49 U.S.C. §11326(b) will apply.

COMMON CONTROL SHOULD BE EXEMPTED

Common control of a rail carrier by a person who is not a rail carrier but that controls a number of railroads is subject to the prior approval and authorization of the Board under 49 U.S.C. §11323(a)(5). Thus, unless the exemption requested herein is granted, the proposed control of HAL by GWI would require that GWI file an application under 49 C.F.R. §1180. Since the transaction does not involve the merger of two Class I railroads, however, the Board would be required to approve the application unless it were to find both:

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. §11324(d).

The Board is directed by 49 U.S.C. §10502 to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy ("RTP") of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. The Interstate Commerce Commission held:

In determining whether regulation of a transaction proposed for exemption under §10505 [now 10502] is necessary to carry out the RTP, our analysis generally focuses on the criteria relating to the underlying statute from which exemption is sought. We need not extend our analysis beyond what we would address in an application proceeding itself. See Finance Docket No. 31493, Blackstone Cap. Partners -- Cont. Exempt. -- CNW Corp., Et Al. (not printed), served July 5, 1989, at 2. Section 10505 provides a shortcut analysis to see if regulation -- in this case under §11344(d)[now 11324(d)] -- is necessary. If §11344(d) does not require review of particular issues, neither does the §10505 process.

Indiana R. Co. Acq. & Oper. Illinois Central R. Co., 6 ICC 2d 1004, 1006 (1990), *aff'd sub nom., Village of Palestine v. ICC*, 936 F. 2d 1335 (D.C. Cir 1991).

As noted above, the inquiry under Section 11324(d) focuses on the lessening of competition and anticompetitive effects. Here, no such effects will be likely.

Further, grant of the requested exemption would also be fully consistent with the standards of 49 U.S.C. §10502. Detailed scrutiny of a full application is not required to carry out the transportation policy of 49 U.S.C. §10101. The grant of an exemption to GWI will minimize the need for Federal regulatory control (49 U.S.C. §10101(2)), foster sound economic conditions in transportation (49 U.S.C. §10101(5)), encourage efficient management of railroads (49 U.S.C. §10101(9)), and provide for expeditious handling and resolution of all proceeding (49 U.S.C. §10101(15)). Moreover, the grant of the exemption will not adversely affect any of the other 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

Additionally, the transaction is clearly limited in scope. The line to be leased by HAL is only 55.5 miles long and is all in a small region of one state. HAL will have less than \$5,000,000 in revenues. While HAL will connect, directly and indirectly, with four other carriers in the GWI system, combined they will only operate in a limited geographical region (as shown on Exhibit C), and the access of shippers will not be reduced. HAL will merely substitute for NSR in handling of traffic between the connecting carriers and NSR. Although the exemption analysis does not require further inquiry, it is also clear in this proceeding that the transaction will not result in any abuse of market power. As noted above, no competitive harm will result (shippers will not lose access to any connecting Class I carriers) and there is no threat of abuse of shippers. By allowing GWI to assume control of HAL, together with the other local carriers in GWI's control, the carriers will be able to

better coordinate service moving to and from NSR, and to take advantage of the planned improvements for the line to be operated by HAL. Further, HAL will benefit from the experience and local marketing contacts of the other railroads to develop additional local business in the region.

Employee Protection

The proposed transaction involves the common control of one Class II carrier, and multiple Class III rail carriers including HAL. Accordingly, the labor protection requirements of 49 U.S.C. §11326(b) will apply.

Environmental and Historic Reports

The proposed common control involves only corporate control, and will not affect the level of operations of either the Hilton-Albany line or on any carriers in the GWI system. As such the proposed transaction should be exempt from the Board's environmental reporting requirements pursuant to 49 C.F.R. §1105.6(c)(2)(ii). Further, the proposed transaction is exempt from the historic preservation reporting requirements since the proposed common control will not substantially change the level of operations over, or maintenance of, either the Hilton-Albany line or any other carriers. See 49 C.F.R. §1105.8(b)(3).

Expedited Consideration

GWI requests expedited consideration of this Petition so that a decision will be granted prior to the proposed effective date of HAL lease of January 1, 2012. Common control exemptions take effect on the same schedule as lease exemptions - thirty (30) days after filing. Although the common

control in this proceeding does not qualify for the exemption because of the connection between HAL and other carriers that GWI controls, as discussed above. GWI is entitled to the exemption on the same basis. GWI acknowledges that if this exemption is not granted on or before January 1, 2012, that it could place the stock of HAL into a voting trust; however this would add unnecessary cost and complexity to the start up, undercutting the goals of the RTP to minimize the need for regulatory control (§10101(2)), to reduce regulatory barriers to entry (§10101(7)), and to provide for expeditious handling of proceedings (§10101(15)).

Conclusion

For the foregoing reasons, GWI requests that the Board, under 49 U.S.C. §10502, exempt its proposed common control of HAL and the other carriers in the GWI system, from regulation under 49 U.S.C. §§11323-11324, and that the exemption be made effective as early as possible, and prior to January 1, 2012.

Respectfully submitted,



ERIC M. HOCKY
THORP REED & ARMSTRONG, LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@thorpreed.com

Dated: November 17, 2011

Attorneys for Genesee & Wyoming Inc.

VERIFICATION

I, Allison Fergus, Secretary of Genesee & Wyoming Inc., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on November 17, 2011.

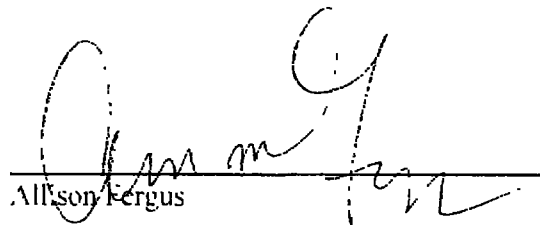

Allison Fergus

EXHIBIT A

CONTROLLED RAILROADS

CONTROLLED RAILROADS³

Class II Carrier

Buffalo & Pittsburgh Railroad, Inc. [New York, Pennsylvania]

Class III Carriers

Allegheny & Eastern Railroad, LLC [Pennsylvania]
Aliquippa & Ohio River Railroad Co., The [Pennsylvania]
AN Railway, LLC [Florida]
Arizona Eastern Railway Company [Arizona, New Mexico]
Arkansas Louisiana & Mississippi Railroad Company [Arkansas, Louisiana]
Atlantic and Western Railway, Limited Partnership [North Carolina]
Bay Line Railroad, LLC, The [Alabama, Florida]
Chattahoochee Bay Railroad, Inc. [Alabama, Georgia]
Chattahoochee Industrial Railroad [Georgia]
Chattooga & Chickamauga Railway Co. [Georgia, Tennessee]
Columbus and Greenville Railway Company [Mississippi]
Columbus and Ohio River Rail Road Company, The [Ohio]
Commonwealth Railway, Incorporated [Virginia]
Corpus Christi Terminal Railroad, Inc. [Texas]
Dansville and Mount Morris Railroad Company, The [New York]
East Tennessee Railway, L.P. [Tennessee]
First Coast Railroad Inc. [Florida, Georgia]
Fordyce and Princeton RR Co. [Arkansas]
Galveston Railroad, L.P. [Texas]
Genesee and Wyoming Railroad Company [New York]
Georgia Central Railway, L.P. [Georgia]
Georgia Southwestern Railroad, Inc. [Alabama, Georgia]
Golden Isles Terminal Railroad, Inc. [Georgia]
Illinois & Midland Railroad, Inc. [Illinois]
KWT Railway, Inc. [Kentucky, Tennessee]
Little Rock & Western Railway, L.P. [Arkansas]
Louisiana & Delta Railroad, Inc. [Louisiana]

³ Allegheny & Eastern Railroad, LLC and Pittsburg & Shawmut Railroad, LLC are non-operating carriers that own rail lines operated by Buffalo & Pittsburgh Railroad, Inc. Maryland and Pennsylvania Railroad, LLC and Yorkrail, LLC are non-operating carriers that own rail lines operated by York Railway Company. Western Kentucky Railway, LLC recently obtained authority to abandon all of its remaining rail lines.. *See, Western Kentucky Railway, LLC -- Abandonment Exemption In Webster, Union, Caldwell and Crittenden Counties, KY*, Docket No. AB-449 (Sub-No. 3X) (Served January 20, 2011).

Luxapalila Valley Railroad, Inc. [Alabama, Mississippi]
 Mahoning Valley Railway Company, The [Ohio]
 Maryland and Pennsylvania Railroad, LLC [Pennsylvania]
 Maryland Midland Railway, Inc. [Maryland]
 Meridian & Bigbee Railroad, LLC [Alabama, Mississippi]
 Ohio and Pennsylvania Railroad Company [Ohio]
 Ohio Central Railroad, Inc. [Ohio]
 Ohio Southern Railroad, Inc. [Ohio]
 Pittsburg & Shawmut Railroad, LLC [Pennsylvania]
 Pittsburgh & Ohio Central Railroad Company, The [Pennsylvania]
 Portland & Western Railroad, Inc. [Oregon]
 Riceboro Southern Railway, LLC [Georgia]
 Rochester & Southern Railroad, Inc. [New York:]
 Salt Lake City Southern Railroad Company, Inc. [Utah] .
 Savannah Port Terminal Railroad Inc [Georgia]
 South Buffalo Railway Company [New York]
 St. Lawrence & Atlantic Railroad Company [Maine, New Hampshire, Vermont]
 St. Lawrence & Atlantic Railroad (Quebec) Inc. [Vermont]
 Talleyrand Terminal Railroad Company, Inc. [Florida]
 Tazewell & Peoria Railroad, Inc. [Illinois]
 Tomahawk Railway, Limited Partnership [Wisconsin]
 Utah Railway Company [Colorado, Utah]
 Valdosta Railway, L.P. [Georgia]
 Warren & Trumbull Railroad Company, The [Ohio]
 Western Kentucky Railway, LLC [Kentucky]
 Willamette & Pacific Railroad, Inc. [Oregon]
 Wilmington Terminal Railroad, Limited Partnership [North Carolina]
 York Railway Company [Pennsylvania]
 Yorkrail, LLC [Pennsylvania]
 Youngstown & Austintown Railroad, Inc. [Ohio]
 Youngstown Belt Railroad Company, The [Ohio]

EXHIBIT B

LOCATIONS OF CONTROLLED RAILROADS

Genesee & Wyoming U.S. Railroads

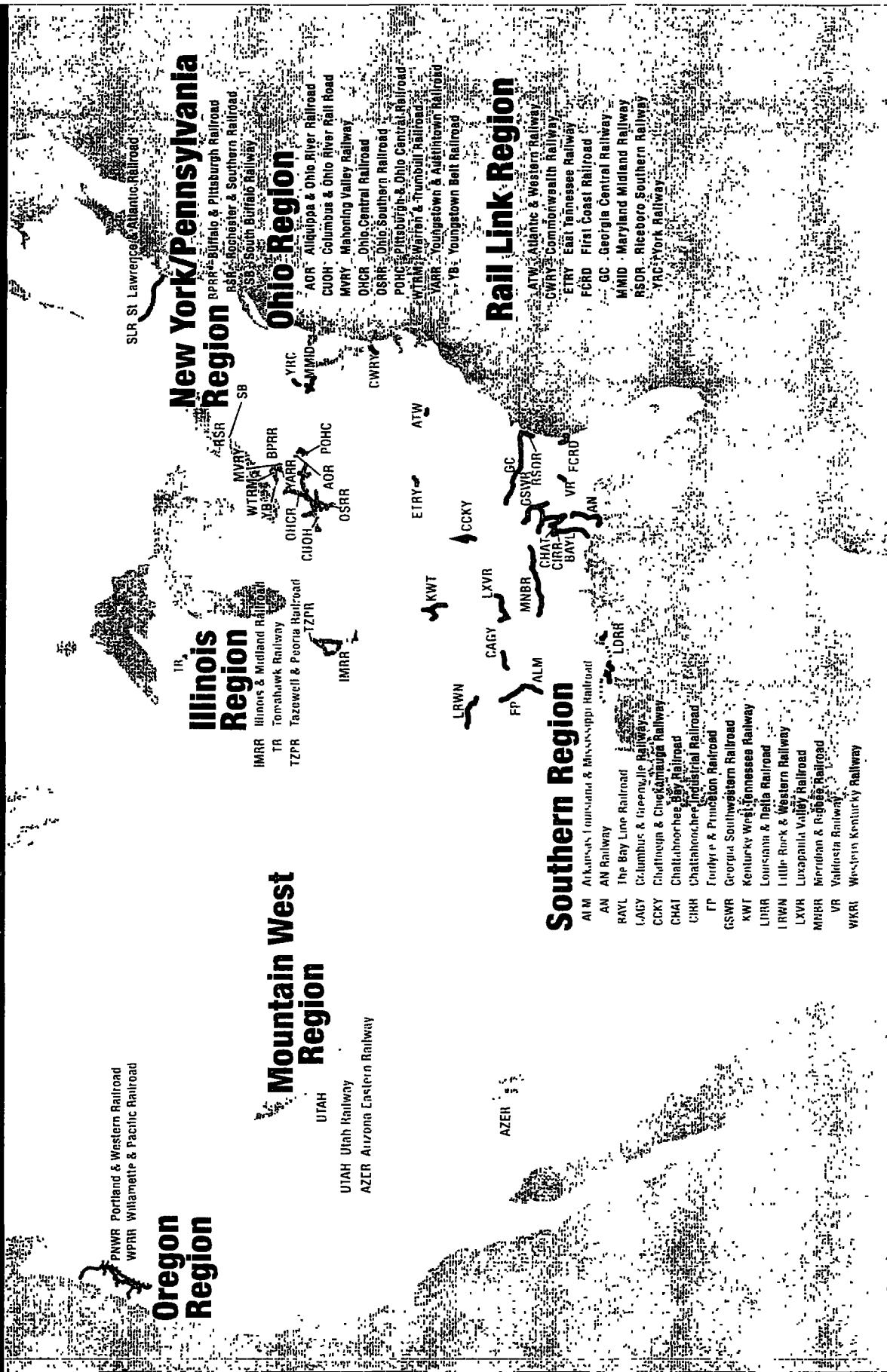


EXHIBIT C

MAP OF HAL PROPOSED OPERATIONS

ALABAMA

White Oak

Eufaula

Abbeville

CHAT

Grimes

Dothan

CIRR

BAYL

Panama City

GSWR

Cuthbert

Americus

Smithville

GEORGIA

Albany

Arlington

Hilton

Safford

Bainbridge

HAL

FLORIDA

Key to Abbreviations



HAL Hilton & Albany Railroad



BAYL The Bay Line Railroad



CHAT Chattahoochee Bay Railroad



CIRR Chattahoochee Industrial Railroad



GSWR Georgia Southwestern Railroad



Trackage Rights